

Date of decision: 16-4-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.K. KESHOTE, J  
(16-4-1996)

Mr. R. K. Mishra for the petitioner.  
Mr. D.G. Chauhan for respondents.

ORAL JUDGMENT:

Heard the learned counsel for the parties.  
The petitioner filed this writ petition praying for setting aside the order annexure-F dated 19-12-1985 and the order annexure-G dated 17-1-1986 and for further direction

to the respondents to promote him to the post of Senior Milk Distribution Officer, with all consequential benefits flowing therefrom, from the date his junior was promoted. It has further been prayed that the petitioner is entitled for further promotion to the post of Assistant Manager (Sales and Distribution).

2. It is not in dispute that the criteria for promotion to the post of Senior Milk Distribution officer was seniority cum merit at the relevant time. The learned counsel for the respondents has been unable to show that Mr. D. N. Bhatt was senior to the petitioner. No seniority list has been produced by the respondents on record wherein the position of the petitioner and Mr. D. N. Bhatt has been shown. In absence of any determination on the question of inter se seniority of the petitioner and Mr. D. N. Bhatt by respondents No.1 and 2, it is difficult to accept that Mr. D. N. Bhatt is senior to the petitioner. From the facts which have been stated by the petitioner it appears that both the petitioner and Mr. D. N. Bhatt had entered in service on the same day and were promoted from time to time to higher posts below Senior Milk Distribution Officer on the same day. The respondents have not come up with the case that the petitioner is junior to Shri D.N. Bhatt. Shri Bhatt is a party to this special civil application and he has also not disputed the seniority of the petitioner above him.

3. Mr. Chauhan, learned counsel for the respondents contended that the petitioner has already retired from service and as such the petition has become infructuous. I don't find any substance in the contention, and the reason is obvious. In case the petition is accepted the petitioner would get much more retirement benefits than what has been paid to him. Instead of retiring from the lower post he will be retired from the higher post. From the reply which has been filed by the respondents it transpires that substantially they failed to controvert the fact that the petitioner is senior to Mr. D. N. Bhatt. In para 6 of the affidavit-in-reply it is stated, "looking to the efficiency and the service record of Mr. D. N. Bhatt the management promoted him as Senior Milk Distribution Officer under office order dated 11-7-1985. It has further been stated that Mr. D. N. Bhatt is efficient and his service records are very clean and blotless. There is no adverse remarks against Mr. D. N. Bhatt. On the other hand, the petitioner is inefficient and his service record is blemished and unsatisfactory". From reading of these averments it is clear that the petitioner was alleged to be not found suitable for promotion on the ground of blemished and unsatisfactory service record. The respondents have

come up with the case of blemished and unsatisfactory service record of the petitioner, in para 7 of the reply, as under:

"(i) On 9-7-73 the petitioner was penalised for deliberate disobedience of lawful order of the superior officers and unauthorisedly occupied the staff quarter. In spite of specific order for vacating the staff quarter, the petitioner did not vacate the quarters and hence one increment due to the petitioner was stopped for a year after holding legal and proper enquiry.

(ii) By order dated 25-11-1972 one increment for one year was stopped for committing serious misconduct."

The aforesaid two adversities of the year 1972-73. Mr. Chauhan learned counsel for the respondents, further stated, by referring to the document annexure-A, that another adversity was there. Translation of the said document was furnished by the learned counsel for the respondents. From the document I do not find any adversity in the service of the petitioner. Vide the said letter the petitioner was advised to make such arrangements in his method so that there may be more and more improvement in his working. It cannot be termed as adversity to the extent to supersede him in promotion more so when criteria for the same is seniority-cum-merits.

4. As stated earlier, the criteria for promotion is seniority cum merit. The two adversities are of the year 1972-73, whereas the promotion has been given to Mr. D. N. Bhatt in the year 1985. For all these 13 years this adversity cannot be taken into consideration. Learned counsel for the petitioner contended that during the last 13 years there was no adversity in the service record of the petitioner and as such there was no justification to consider the service record of the petitioner as blemished and unsatisfactory on the basis of the adversities of distant past. Learned counsel for the respondents has been unable to satisfy the court on this question. The last adversity stated earlier cannot be termed to be adversity. Taking into consideration the totality of facts of the case I am satisfied that the case of the petitioner for promotion to the post of Senior Milk Distribution Officer was not fairly and impartially considered. There was no adversity of recent past whatsoever in the service record of the petitioner and as such his supersession in promotion cannot be allowed to stand.

5. In the result the writ petition succeeds and the same is allowed. It is declared that the petitioner has been denied promotion to the post of Senior Milk

Distribution Officer without any basis. So far as other prayers of the petitioner are concerned, they no more survive as he has already retired from service and as such there is no need to quash annexures F and G to the petition. The respondents are directed to consider the case of the petitioner for promotion to the post of Senior Milk Distribution Officer and in case he is found suitable he may be given promotion from the date on which Mr. D. M. Bhatt was given promotion to the post of Senior Milk Distribution Officer, with all consequential benefits flowing therefrom including consideration for promotion to the next higher post. Rule made absolute in the aforesaid terms. The respondent No.1 shall pay Rs.2,000/- (Rupees two thousand) to the petitioner as costs of this litigation.